Balakrishnan a/l Ramasamy v Lum Lye Peng & Anor (Lee Leng Kwai, Intervener)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22-532 OF 1994
ZALEHA ZAHARI J
13 JUNE 1996

Civil Procedure *— Injunction — Interlocutory injunction, application for — Injunction by tenant restraining administrator of co-owner's estate from entering into premises — Whether entry by administrator was lawful without first obtaining a court order — Whether tenant's rights had been infringed — Whether status quo before the forcible entry ought to be preserved — Specific Relief Act 1950 ss 7(2) & 8*

Landlord and Tenant *— Capacity — After death of co-owner — Whether co-administrator cum co-owner has capacity to enter into a binding tenancy agreement in respect of whole premises — Whether tenancy binds estate of deceased — Whether tenant who relied on the tenancy was a trespasser — Probate and Administration Act 1959 s 60*

The plaintiff was the tenant of premises which formed part of a shophouse ('the premises'). The shophouse was co-owned by the intervener and her brother ('the deceased'). The intervener and the deceased's widow ('the first defendant') were issued letters of administration to the deceased's estate on 19 January 1987. The plaintiff claimed to have occupied the premises since 1988 and had been a tenant thereof pursuant to tenancy agreements entered into with the intervener. By a letter dated 28 May 1994, he had given notice to the intervener of his intention to exercise his option to renew the tenancy thereof until 30 October 1996. This option was granted by a tenancy agreement dated 30 November 1992 and was exercised by the plaintiff well within the three months before the expiration of the tenancy as required by the agreement which was originally for a period between 1 October 1992 to 30 September 1994. The plaintiff took the view that there was another concluded tenancy agreement for a further period of two years and stayed on after 30 September 1994. The plaintiff knew that there were some frictions between the intervener and the beneficiaries of the said premises and there were some negotiations as to the possibility of the plaintiff giving up the rear portion thereof at half rental upon expiration of the current tenancy. He claimed that on 7 October 1994, the first defendant together with some unknown men broke down the walls leading into his office in the premises.

Consequently, the plaintiff applied for an injunction to restrain the defendants from entering upon any part of the premises. The intervener was later joined as a party to the suit. The plaintiff contended that the tenancy agreement entered into between the intervener, who was the co-owner and co-administrator of the deceased's estate, and the plaintiff himself was valid even though the estate was not name as a party to the agreement. The intervener's affidavit sought to show that the first defendant had knowledge of the tenancy agreement. The plaintiff also contended that the first

A defendant had no right to barge in to occupy the premises and alternatively even if he did have some right, a court order pursuant to s 7 of the Specific Relief Act 1950 ('the Act') must first be obtained.

The first defendant contended otherwise and took the view that the plaintiff was a trespasser so that ss 7(2) and 8 of the Act did not B apply. Further, the first defendant alleged that the plaintiff had orally agreed to relinquish the rear portion of the premises to her to enable her to carry out renovation works for the purpose of the second defendant's business to be carried out thereon. The court was also urged not to issue an injunction by reason of the fact that the first defendant had already expended monies by the renovations and the C second defendant was already in occupation of the rear portion of the premises. It was submitted that there was nothing exceptional in the circumstances of this case warranting the issuance of an interlocutory mandatory injunction before trial.

D **Held**, allowing the application:

(1) Section 60 of the Probate and Administration Act 1959 clearly enabled the intervener to enter into a tenancy agreement in respect of the estate's half share. The intervener was therefore competent to act in her own right in respect of her own half E share. In these circumstances, the intervener had capacity to enter into a binding tenancy agreement in respect of the whole of the premises and the agreement entered into between the intervener and the plaintiff appeared to be valid (see p 119I).

(2) Even if the first defendant in her capacity as co-administrator and beneficiary had some right of occupation to the premises, s 7 of the Act must first be complied with. Moreover, since there was a valid tenancy agreement binding the parties, the first defendant was in error when she viewed the plaintiff as a trespasser. Thus, whatever might be the cause of differences between the first defendant and the intervener after the plaintiff had rented the G premises for six years, this should not affect the contractual right conferred on the plaintiff to exercise the option clause and the first defendant was not entitled to take the law into her own hands by barging in and breaking down the walls (see p 120C–D).

(3) In all the circumstances, prima facie, it was clear that the plaintiff's H rights had been infringed and the balance of convenience was in favour of the plaintiff. The status that had to be preserved was the position before the forcible entry by the first defendant. The first defendant ought not be allowed to seek to take advantage of her own wrongful act of taking the law into her own hands (see p 120E).

I

Per curiam

A plaintiff seeking an interlocutory injunction must establish a prima facie case of some breach of duty to him. It is no part of the court's function at this stage of litigation to resolve conflicts of evidence as to

the facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which calls for detailed argument and mature consideration (see p 119G); *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504 followed.

[Bahasa Malaysia summary

Plaintif adalah penyewa sebuah premis yang merupakan sebahagian dari sebuah rumah kedai. Rumah kedai tersebut adalah dimiliki bersama oleh pencelah dan abangnya ('si mati'). Pencelah dan balu si mati (defendan pertama) telah diberikan surat kuasa mentadbir kepada harta pusaka si mati pada 19 Januari 1987. Plaintif mendakwa telah menduduki premis tersebut sejak tahun 1988 dan merupakan penyewanya menurut perjanjian-perjanjian penyewaan yang diikat dengan pencelah. Melalui sepucuk surat bertarikh 28 Mei 1994, beliau telah memberi notis kepada pencelah tentang niatnya untuk melaksanakan opsyennya untuk membaharui penyewaan tersebut sehingga 30 Oktober 1996. Opsyen ini telah diberikan oleh perjanjian penyewaan bertarikh 30 November 1992 dan telah dilaksanakan oleh plaintif dalam masa tiga bulan sebelum peluputan penyewaan seperti yang dikehendaki oleh perjanjian tersebut yang pada asalnya adalah untuk tempoh antara 1 Oktober 1992 sehingga 30 September 1994. Plaintif telah berpendapat bahawa terdapat satu lagi perjanjian penyewaan untuk tempoh lanjut selama dua tahun dan telah menetap di situ selepas 30 September 1994. Plaintif tahu bahawa terdapat pergeseran antara pencelah dan benefisiasi-benefisiari kepada premis tersebut dan terdapat perbincangan mengenai kemungkinan plaintif melepaskan bahagian belakang premis tersebut pada kadar separuh sewa atas peluputan penyewaan yang sedia ada. Beliau mendakwa bahawa pada 7 Oktober 1994, defendan pertama bersama beberapa orang yang tidak dikenali telah memecah dinding yang menuju ke pejabat beliau dalam premis tersebut.

Seterusnya, plaintif telah memohon untuk injunksi untuk menahan defendan dari memasuki mana-mana bahagian premis tersebut. Pencelah kemudiannya telah ditambahkan sebagai pihak dalam guaman tersebut. Plaintif menghujahkan bahawa perjanjian penyewaan tersebut yang diikat antara pencelah, iaitu pemilik bersama dan pentadbir bersama kepada harta pusaka si mati dan plaintif sendiri adalah sah meskipun harta pusaka tersebut telah tidak dinamakan sebagai pihak kepada perjanjian tersebut. Afidavit pencelah cuba menunjukkan bahawa defendan pertama mempunyai pengetahuan tentang perjanjian penyewaan tersebut. Plaintif juga berhujah bahawa defendan pertama tidak berhak untuk merempuh ke dalam untuk menduduki premis tersebut dan alternatifnya, jikapun ia mempunyai hak, suatu perintah mahkamah menurut s 7 Akta Relief Spesifik 1950 ('Akta tersebut') mestilah diperolehi dahulu. Defendan pertama telah menghujahkan sebaliknya dan berpendapat bahawa plaintif adalah penceroboh; oleh itu ss 7(2) dan 8 Akta tersebut tidak terpakai. Selanjutnya, defendan pertama mendakwa

bahawa plaintif telah bersetuju secara lisan untuk menyerahkan bahagian belakang premis tersebut kepadanya untuk membolehkannya melaksanakan kerja-kerja pengubahsuaian untuk tujuan perniagaan yang akan dijalankan oleh defendan kedua di situ. Mahkamah juga digesa supaya jangan mengeluarkan injunksi berdasarkan fakta bahawa defendan pertama telahpun membelanjakan wang ke atas pengubahsuaian dan bahawa defendan kedua telahoun menduduki bahagian belakang premis tersebut. Telah dihujahkan bahawa tidak ada keadaan luarbiasa dalam kes ini yang mewajarkan pengeluaran injunksi interlokutori mandatori sebelum perbicaraan.

Diputuskan, membenarkan permohonan tersebut:

(1) Seksyen 60 Akta Probet dan Pentadbiran 1959 dengan nyata membolehkan pencelah mengikat suatu perjanjian penyewaan mengenai separuh bahagian kepunyaan harta pusaka tersebut. Pencelah adalah kompeten untuk bertindak dalam haknya mengenai separuh bahagiannya sendiri. Dalam keadaan-keadaan ini, pencelah mempunyai keupayaan untuk mengikat suatu perjanjian penyewaan yang mengikat mengenai keseluruhan premis tersebut dan perjanjian tersebut yang diikat di antara pencelah dan plaintif nampaknya sah (lihat ms 119I).

(2) Jikapun defendan pertama dalam keupayaannya sebagai pentadbir bersama dan benefisiari mempunyai beberapa hak pendudukan kepada premis tersebut, s 7 Akta tersebut mestilah dipatuhi. Lagipun oleh sebab adanya suatu perjanjian penyewaan yang sah, defendan pertama adalah terkhilaf semasa beliau mengganggap plaintif sebagai seorang penceroboh. Walau apa jua yang menjadi sebab perselisihan-perselisihan antara defendan pertama dan pencelah selepas plaintif telah menyewa premis tersebut selama enam tahun, ini tidak harus menjejaskan hak kontraktual yang diberi kepada plaintif untuk melaksanakan fasal opsyen tersebut dan defendan pertama tidak berhak untuk mengambil undang-undang dalam tangannya sendiri dengan merempuh ke dalam dan memecahkan dinding tersebut (lihat ms 120C–D).

(3) Dalam semua keadaan, prima facie, mahkamah adalah berpuas hati bahawa hak-hak plaintif telah dicabuli dan imbangan kemudahan adalah memihak kepada plaintif. Status yang perlu dikekalkan adalah kedudukan sebelum kemasukan secara paksaan oleh defendan pertama. Defendan pertama tidak patut dibenarkan mengambil kesempatan dari tindakan salahnya sendiri dengan mengambil undang-undang dalam tangannya sendiri (lihat ms 120E).

Per curiam

Plaintif yang memohon injunksi interlokutori mestilah membuktikan kes prima facie pelanggaran kewajipan terhadapnya. Adalah bukan fungsi mahkamah pada peringkat litigasi ini untuk menyelesaikan

konflik keterangan mengenai fakta-fakta di mana tuntutan mana-mana pihak bergantung atau pun untuk memutuskan persoalan undang-undang yang susah yang memerlukan hujah yang terperinci dan pertimbangan yang matang (lihat ms 119G); *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504 diikut.]

Notes

For cases on capacity to enter into a tenancy agreement, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 8–27.

For cases on application for interlocutory injunction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1613–1615.

Case referred to

American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 (folld)

Legislation referred to

Probate and Administration Act 1959 s 60
Specific Relief Act 1950 ss 7(2), 8

Chandra Nair (*Thevin Chandran & Wong*) for the plaintiff.
Rajeswari Muniandy (*Rajesh & Associates*) for the first defendant.
Malek Hakim (*Malek Ngeow Giok & Tan*) for the second defendant.
Franklin Goonting (*Lim Soh & Goonting*) for the intervener.

Zaleha Zahari J: This is an application by Balakrishnan a/l Ramasamy ('the plaintiff') against Lum Lye Peng ('the first defendant') and Set Kon Kim ('the second defendant') for an order that the first and second defendants, whether by themselves, their servants or agents be restrained from entering upon any part of the premises known as 20A, Jalan Telawi Lima, 59100 Kuala Lumpur ('the premises').

On 18 November 1994, Lee Leng Kwai ('the intervener') — who owns a half share of the shophouse in her own right of which the premises are a part of and was one of the administrators of the estate of Lee Meng Kuan (deceased) between 27 May 1986 to 21 June 1994 which owns the other half share of the shophouse — applied for leave to intervene and be joined as a party to these proceedings. I had, on 22 December 1994, allowed the said application as I was satisfied that the intervener's presence was necessary to effectively adjudicate and settle all the questions involved in this action.

The background facts and rival contentions leading to this application are as follows.

The shophouse concerned was purchased by the intervener and her brother, Lee Meng Kuan, on 8 November 1983. On 9 November 1983, Lee Meng Kuan died. Thereafter, on 25 October 1986, the intervener and the first defendant (the widow of Lee Meng Kuan), were appointed administrators of his estate. The grant of letters of administration was duly

A issued to the first defendant and the intervener on 19 January 1987. Be that as it may, to date, the shophouse continues to be in the names of the intervener and the deceased, Lee Meng Kuan (exh B-3, encl 3).

According to the plaintiff, he has been in exclusive possession of the said premises since 1988 upon which he runs a dental clinic. It was the B plaintiff's case that he had entered into a tenancy agreement with the intervener in respect of the premises, initially for a period of two years and which was subsequently extended for another two years.

According to the plaintiff, on 30 November 1992, a fresh tenancy agreement was entered into between him and the intervener in respect of C the premises, also for a period of two years from 1 October 1992 to 30 September 1994 (exh B-1, encl 3). Vide option cl 4(e) of the new tenancy agreement, the plaintiff was granted an option to renew the tenancy for a further term of two years provided that he gave three months notice prior to its expiration. Well within the three months before the expiration of this agreement, vide letter dated 28 May 1994, the plaintiff D exercised the option by giving a notice to the person that he had been dealing with all along as landlady, ie the intervener, of his desire to extend the tenancy of the premises for a further term of two years until 30 October 1996 at a new rental of RM3,000 (exh B-4, encl 3).

From the affidavits filed by both parties, at about this time of issuing E the option to renew, it would appear that the plaintiff was put to notice that there was some friction between the intervener and persons having a beneficial interest in respect of the premises that he was renting. Although the plaintiff had given notice of his intention to renew the tenancy, it would appear that there were some negotiations as to the possibility of the plaintiff giving up the rear portion of the said premises upon the expiration F of the current tenancy at half of the rental of the main tenancy. The notice dated 19 September 1994 issued by the plaintiff's lawyers, Messrs DP Vijandran & Associates to the first defendant's lawyers then, Messrs Yusuf, Lee, Pathma and Marbeck to that effect, refers (exh B-8, encl 3).

The plaintiff took the position that because he had exercised the G option within the requisite period, there was in fact a concluded tenancy agreement for another two years at a rental of RM3,000. In these circumstances, he continued to stay on the premises after 30 September 1994.

According to the plaintiff, a week into the extended tenancy, his H clinic was in ruins. The plaintiff complains that on 7 October 1994, the first defendant, claiming to be the owner of the premises and a few unknown men, broke down the walls leading to the office of his clinic. Upon the advice of the person that he had all along been dealing with as landlady, the intervener, that the first defendant had no authority to act as she did, the plaintiff lodged a police report (Kuala Lumpur Police Report I No 4549/94, exh B-9, encl 3) on 7 October 1994.

Another report was lodged by the plaintiff on 28 October 1994, ie Police Report No 4904/94 (exh B-15, encl 3). According to this report, the plaintiff complained that the workmen, acting under the instructions of the first defendant, ransacked the clinic's cupboards and threw its contents

along the corridor. Patients were also prevented access to the clinic by the placement of drums on the staircase. A third report, ie Police Report No 5000/94, was lodged by the plaintiff on 4 November 1994. According to this report, the plaintiff stated that he had closed and locked his clinic on 30 October 1994 pending the institution of civil proceedings by reason of the threats and trespasses by persons unknown, acting on the instructions of the first defendant. On 4 November 1994, he found the lock of the grill door leading to the clinic had been forced upon and workmen carrying out renovation works on the premises. According to the plaintiff, the workmen then obstructed the plaintiff from checking on his things and assessing the damage to his property.

The plaintiff caused a writ of summons to be issued on 1 November 1994, and on the same day, filed this summons in chambers for an injunction to restrain the defendants from entering upon any part of the premises.

Counsel for the plaintiff submitted that the tenancy agreement entered into by the intervener, in her capacity as owner of her own half share as well as one of the co-administrator of the estate in respect of the other half share, was a binding one. He argues that the intervener had the capacity to enter into such an agreement and that it was valid although the estate had not been expressly named as a party in the agreement executed.

Relying on the affidavit filed by the intervener, the court was urged to accept that the first defendant had full knowledge of the tenancy agreement by reason of the first defendant's acknowledgement of receipt of half of the rent collected by the intervener. According to the intervener, direct payments of the rental had been made to the first defendant or had been utilized towards payment of the deceased's income tax, towards settlement of the first defendant's debts and towards rental in respect of a shophouse rented by the first defendant. The intervener had also averred of being responsible for upkeeping and looking after the first defendant's children. The accounts presented by the intervener for the relevant period showing the expenditure/amount disbursed, duly signed by the first defendant, was relied upon as conclusive evidence in support of the allegation that the first defendant had full knowledge and had consented to the tenancy entered into in respect of the premises by the intervener with the plaintiff.

It was also the plaintiff's case that the first defendant's status as co-administrator and as one of the beneficiaries of the estate in respect of half share of the property does not confer upon her the right to barge in and occupy the premises. Alternatively, even if she did have some right over the premises, it was the plaintiff's case that a court order pursuant to s 7 of the Specific Relief Act 1950 must first be obtained.

The plaintiff's counsel urges this court to hold that this was an appropriate case for an interlocutory mandatory injunction. According to him, the plaintiff had clearly been unlawfully and forcibly dispossessed of part of the premises lawfully demised to him. Further, the balance of convenience test, according to counsel for the plaintiff, lies in favour of the

A plaintiff. According to him, the plaintiff would suffer irreparable damage should an injunction not be granted.

Counsel for the first defendant argues otherwise. The first defendant denies any knowledge of the agreement entered into between the intervener and the plaintiff in respect of the premises. According to her, the first B defendant's status as a co-administrator of the estate and as one of the beneficiaries of half share of the property conferred upon the first defendant equal rights to the property with the intervener who owns the other half share.

According to counsel for the first defendant, the tenancy agreement entered by the intervener with the plaintiff was not binding on the estate C as the estate had not been expressly cited as a party in the agreement. Accordingly, the subsequent exercise of an option for renewal for a further term conferred by such an 'invalid' agreement does not arise.

The first defendant took the view that the plaintiff was a trespasser. As such trespasser, it was submitted that s 7(2) and s 8 of the Specific D Relief Act 1950 does not apply. The first defendant, cum beneficiary and co-administrator, was not precluded from exercising self-help remedy to repossess the premises.

It was also the first defendant's case that the plaintiff had notice of the first defendant's interest in the premises, prior to the expiration of the E tenancy, and had orally agreed to relinquish the rear portion of the premises to her and to her carrying on the renovation works. This oral promise was the basis upon which the first defendant entered into the rear portion of the premises, carried out renovation works, and the execution of a tenancy agreement with the second defendant for the purpose of the second defendant carrying out the business of a hair dressing saloon.

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The principle which ought to guide me is clear. A plaintiff seeking an interlocutory injunction must establish a prima facie case of some breach of duty to him. I am however mindful of the words of Lord Diplock in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504 at p 510:

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> It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which calls for detailed argument and mature considerations.

I propose to base my decision on facts which are not disputed or deemed admitted.

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Counsel for the first defendant has conceded that s 60 of the Probate and Administration Act 1959 enables any one of the personal representatives to enter into a tenancy agreement. Section 60 clearly enables the intervener to enter into a tenancy agreement in respect of the estate's half share. The intervener was of course competent to act in her own right in respect of her I own half share. In these circumstances, I am of the view that the intervener had capacity to enter into a binding tenancy agreement in respect of the whole premises and the agreement entered into between the intervener and the plaintiff appears to be valid.

On the basis of the contemporaneous documents presented before me, I find it difficult at this stage to accept the first defendant's denial of knowledge of the tenancy agreement entered into. Exhibit E1-4 of the intervener's affidavit shows clearly how the estate's half share of rent had been disbursed by the intervener and the first defendant duly acknowledging the same. The first defendant appears to have full knowledge of the plaintiff's tenancy.

I am further of the view that even if the first defendant, in her capacity as co-administrator and beneficiary, had some right of occupation to the premises, s 7 of the Specific Relief Act 1950 must first be complied with. In view of my finding that there was a valid tenancy agreement, I am of the view that the first defendant was in error when she viewed the plaintiff as a trespasser. Whatever may be the cause of differences between the first defendant and the intervener after the plaintiff had rented the premises for six years, this should not affect the contractual right conferred on the plaintiff to exercise the option clause and the first defendant was not entitled to take the law into her own hands by barging in and breaking down the walls.

In all circumstances, prima facie, the plaintiff satisfied me that his rights had been infringed; that he was in possession; that he had been forcibly dispossessed of half of the premises tenanted to him; that such dispossession took place without his consent; that such dispossession was not done in due course of law.

On the application of the balance of convenience test, I have been urged not to issue an injunction by reason of the fact that the first defendant had already expended monies by the renovations and the second defendant was already in occupation of the rear portion of the premises and operating a hair saloon there. It was submitted that there was nothing exceptional in the circumstances of this case warranting the issuance of an interlocutory mandatory injunction before trial.

Applying the balance of convenience, I am of the view that it lies in favour of the plaintiff. The status that has to be preserved is the position before the forcible entry by the first defendant. The first defendant cannot seek to take advantage of her own wrongful act of taking the law into her own hands.

In all circumstances, the plaintiff's application for an injunction was allowed upon the usual undertaking as to damages and that costs of and incidental to this application be costs in the cause.

Application allowed.

Reported by Yong Yuan Kea